

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NATALIE KRAMER,

Plaintiff,

-against-

AMERICAN INTERNATIONAL
INDUSTRIES,

Defendant.
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MEMORANDUM & ORDER

13-CV-2913 (FB) (SMG)

Appearances:

For the Plaintiff:

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For the Defendant:

JOSEPH M. PUZO
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BLOCK, Senior District Judge:

American International Industries (“AII”) objects to an order of Magistrate Judge Steven M. Gold awarding fees and costs to plaintiff Natalie Kramer for expenses incurred due to AII’s failure to timely produce discovery material.

Kramer served document demands on AII on September 20, 2013, calling for, among other things, “all legal pleadings, petitions and claim forms concerning any/all actions concerning the subject product” and “all documents concerning complaints, concerning the subject product, including complaint letters, e-mail complaints, phone calls, [and] internet/online complaint postings.” ECF No. 23-3 ¶¶ 34, 36. AII

responded to the demand on December 9, 2013, despite a due date of October 21, 2013. Kramer's counsel identified deficiencies in AII's production and arranged a conference for December 18, 2013, at which AII agreed to produce additional responsive documents, but did not do so in the subsequent months.

On June 6, 2014, Judge Gold held a conference in which he directed Kramer's counsel to serve AII with a letter identifying all outstanding discovery and authorized Kramer to depose the defendant with respect to its search for documents. AII produced additional documents on August 19, 2014, which Judge Gold identified as "clearly called for in plaintiff's original demands." Judge Gold's Order at 3.

On April 23, 2015, Kramer deposed Charles Loveless, AII's Executive Vice President. Loveless acknowledged that AII maintained a log of consumer complaints, but did not recall if the log had been searched for entries responsive to Kramer's demands. After Loveless's deposition, AII conducted an additional search for responsive documents and on May 19, 2015, produced additional documents responsive to Kramer's September 20, 2013, demand.

Judge Gold determined that AII "offered no reasonable explanation for its failure to provide discovery properly demanded by plaintiff without motion practice and a Rule 30(b)(6) deposition" and concluded that an award of fees and costs to Kramer was warranted. *Id.* at 5. Kramer's counsel submitted a declaration detailing approximately thirty-two hours of work, which Judge Gold awarded at a rate of \$300

per hour, and \$838.92 for the court-reporter services for Loveless's deposition.

AII objects to Judge Gold's award of fees and expenses on a number of grounds. First, AII objects to any fees and expenses that relate to the deposition of Loveless because it asserts that deposing Loveless would have been necessary regardless of any document-production delays it caused. But the deposition of Loveless was conducted pursuant to a 30(b)(6) subpoena directed at AII, not Loveless specifically, as authorized by Judge Gold for the purpose of evaluating AII's compliance in discovery.

Second, AII asserts that any time billed by Kramer's counsel for researching other litigation against AII should not be awarded because "any diligent attorney would perform these searches regardless of discovery responses," AII's Objections at 3, but a proper discovery response in the first instance would have dramatically reduced any need for additional research.

Lastly, AII states that its discovery delays "were partially attributable to good faith disagreements between counsel" but provides no details for the Court to assess the validity of the objection.

The Court affirms Judge Gold's memorandum and order awarding fees and costs to Kramer.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
June 15, 2016